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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,438

11/21/2003

Jean Paul Craze

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MICHAEL P. MAZZA, LLC  
686 CRESCENT BLVD.  
GLEN ELYN, IL 60137

EXAMINER

GREENHUT, CHARLES N

ART UNIT

PAPER NUMBER

3652

MAIL DATE

DELIVERY MODE

06/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/719,438	Applicant(s) CRAZE, JEAN PAUL	
	Examiner Charles N. Greenhut	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 4/9/07 & 1/16/07.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**I. Request for Continued Examination**

1. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, THIS ACTION IS MADE FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**II. Information Disclosure Statement**

1. Applicant has indicated in remarks that the following objection was addressed by filing a proper form 1449 on 1/16/07. However no such paper is found in the application file as of the date of this action. The following objection, therefore, remains in effect.
  - 1.1. Applicant has provided a printout of a web page with the amendment submitted 7/26/06. 37 CFR 1.98(b) requires a list of all patents, publications, or other

information submitted for consideration by the Office, and MPEP § 609.04(a) requires the to be must be submitted in a separate paper. Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### **III. Drawings**

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore the “frame fork attachment” of claim 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Figures 13-16 are objected to as containing new matter as discussed below. Additionally,
  - 2.1. reference numeral 60 has previously been used to reference the plates on adjacent sides of the receiver while “66” is used to reference what appears to be the same feature in figures 13-16. Like features should have the same reference numeral. The record should be clarified with respect to this matter in response to this action.
  - 2.2. reference numeral 55, has previously been used to reference the pivot pin, whereas reference numeral 57 has previously been used to reference the cylinder rod connecting pin. In figures 13-16 and the corresponding description, however, “55” appears to be used to denote the cylinder connecting pin. The same reference numeral may not be used to denote different features. The record should be clarified with respect to this matter in response to this action.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

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sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### **IV. Specification**

1. The amendments filed 9/25/06, 7/26/06 and 1/16/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

1.1. The figures 13-16 showing elements 130, 140 and 141 and corresponding description are not supported by the original disclosure.

1.1(a) Note: the amendment to the specification clarifying the terms rapidly and quickly may be entered if submitted on a separate paper.

Applicant is required to cancel the new matter in the reply to this Office Action.

**V. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-10 and 12-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. The term "rapidly" in claim 1, 6, 19 and 22 is a relative term which renders the claim indefinite. The term "rapidly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

1.2. The term "quickly" in claim 12 is a relative term which renders the claim indefinite. The term "quickly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

**VI. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1-6, 8-10, 12-13, and 15-18 is/are rejected under 35 U.S.C. 102(b) as being anticipated by NOLASCO (US 6,139,250 A).

- 1.1. With respect to claim 1, NOLASCO discloses a transverse cross bar (12d), connected to a boom (11), two receivers (16)/(17) connected to opposing ends of the cross bar (12d), wheel support member (20)/(21) having an elongated arm (20a)/(21a), and a wheel retainer (22)/(23), and powering mechanisms driving horizontal movement (27)/(28).
- 1.2. With respect to claims 2-5, NOLASCO additionally discloses the apparatus is a self-loading wheel lift, and may be rapidly disassembled to permit conversion to an alternate towing apparatus such as a tow bar with a fork.
- 1.3. With respect to claims 6, and 8-10 and 12, NOLASCO additionally discloses one or more mechanisms facilitating rapid connection and decoupling (e.g., bolt, pin and receiver), hydraulic cylinders (27)/(28) communicating with rods having apertures removably attached to receivers, and a removable locking pin (shown not labeled Fig. 3).
- 1.4. With respect to claims 13, 15-18, NOLASCO additionally discloses the wheel support members comprising an L-arm (20/21) pivotally attached to receivers (at 24/25) by parallel plates (18)/(19), the boom extensible and retractable, hydraulic power and movable ends (16)/(17).

## **VII. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1. Claim(s) 7 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NOLASCO (US 6,139,250 A) in view of KIEFER (US 5,575,606 A).

- 1.1. With respect to claim 7, NOLASCO does not elaborate on the coupling mechanisms.

The cam lock including a rotatable handle and spring loaded plunger pin that applicant uses for rapid connection and disconnection is well known and commonly used in the art to facilitate rapid connection and disconnection of components as illustrated by KIEFER (Figs. 5A-B). It would have been obvious to one of ordinary skill in the art to modify NOLASCO with the mechanism of KIEFER in order to facilitate connection and disconnection.

2. Claim(s) 14 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NOLASCO (US 6,139,250 A).

- 2.1. With respect to claim 14, NOLASCO is silent as to what holds the pivot pin in place.

Retaining screws are well known and commonly used in the art to hold things in place. It would have been obvious to one of ordinary skill in the art to use a retaining screw in order to hold the pivot pin of NOLASCO in place.

3. Claim(s) 19-24 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NOLASCO (US 6,139,250 A) in view of PETERSON (US 4,384,817 A).

- 3.1. With respect to claim 19-24, NOLASCO discloses a transverse cross bar (12d), connected to a boom (11), two receivers (16)/(17) connected to opposing ends of the cross bar (12d), wheel support member (20)/(21) having an elongated arm (20a)/(21a), and a wheel retainer (22)/(23), and powering mechanisms driving horizontal movement (27)/(28). NOLASCO fails to teach rapidly disassembling the



wheel lift and replacing it with an alternate towing apparatus. PETERSON teaches rapidly disassembling the wheel lift and replacing it with an alternate towing apparatus (Figs. 9-10). It would have been obvious to one of ordinary skill in the art to modify NOLASCO with the detach and replace step of PETERSON in order to accommodate vehicles requiring a sling for towing and vehicles requiring handling by engaging an opposed pair of wheels. NOLASCO additionally discloses hydraulic cylinders (27)/(28) communicating with rods having apertures removably attached to receivers, and a self loading wheel lift. NOLASCO additionally discloses in discussion of prior art that fork attachments are known in the art (Col. 2 Li. 57). It would have been obvious to one of ordinary skill in the art to use a frame fork attachment in order to lift a vehicle by its frame.

#### **VIII. Response to Applicant's Arguments**

Applicant's arguments and affidavits entered 4/9/07 have been fully considered.

1. Applicant argues that the objection to the drawings for not showing every feature of the claimed invention is improper with respect to claims 19 and 21. Applicant's arguments are persuasive with respect to claim 19 since element 100, the frame fork holder, could properly be considered an alternate towing apparatus. Applicant's argument's are not persuasive with respect to claims 21. The objection therefore remains in effect with respect to claims 21. With respect to claim 21 applicant argues that the "frame fork attachment" is shown at 100. Element 100 is represents the "frame fork holder" which does not include the frame fork itself. The "frame fork attachment" is therefore not shown.

2. Applicant argues, by remarks and declaration, that figures 13-16 do not contain new matter because a person of ordinary skill in the art would have understood that the design shown in figures 13-16 had been disclosed in the specification as originally filed. This argument is not persuasive. Firstly, Applicant has supplemented the figures by an amendment to the specification describing the cylinder rod coupling configuration of figures 13-16 as an alternative design. This is evidence that the coupling method shown in figures 13-16 was not contemplated by the original disclosure. Secondly elements 130, 140, and 141 and their corresponding subcomponents are not described anywhere in the specification as originally filed. The paragraph Applicant points to to provide support for this amendment merely states, in relevant part, that, "The cylinder rod connection point may also need to be connected or disconnected as well. For this purpose, the distal ends of each cylinder rod may include an aperture for use in coupling each cylinder rod to a receiver. Alternatively, each cylinder rod may consist of two component rods that are connected to each other, e.g., one may be slidable within the other and they may be attached using a removable locking pin allowing rapid field disassembly." Neither of the contemplated embodiments supports the embodiment shown in figures 13-16. The first requires the cylinder rod to have an aperture (e.g., Fig 4 -75a) which the cylinder rod of figure 14 does not. The second requires the cylinder rod (75) to be composed of two component rods, one slidable within the other, which is not shown in any figures. While it is known in the art that the terminal portion of the rod may take either the form shown in the figures 1-12 embodiment or the 13-16 embodiment, the coupling device itself, generally indicated at 130/140/141 and its attachment to the rod end and the receivers

is not described in the specification as originally filed and one of ordinary skill in the art would not interpret the language on page 6 paragraph 2 to include these components.

3. Applicant argues that use of the term, “rapidly” in claims 1, 6, 19 and 22 does not render the claims indefinite under 35 USC 112 2<sup>nd</sup> paragraph. This argument is not persuasive. Firstly, with regard to the first declaration, the fact that the term is elaborated on by declaration does not change the fact that the term is one of degree and capable of infinite interpretations and is therefore indefinite. Applicant additionally argues that the terms “quickly” and “rapidly” are definite because the terms are essentially analogous to terms like “about”, “substantially”, and “period sufficient” which are terms of degree that have been held, in certain circumstances to be definite. This argument is not persuasive. The Examiner agrees that the fact that a claim contains a term of degree, does not in and of itself render the claim indefinite so long as one of ordinary skill in the art would understand what is claimed. In this instance, however, the terms employed, “rapidly” and “quickly” depend on the unrestrained, subjective opinion of the person practicing the invention. I.e., what is rapidly to one, may not be to another. One of ordinary skill in the art would recognize this term is relative and subjective. This is evidenced by Applicant’s own declaration of 1/12/07 where the process for disassembling NOLOASCO is described as “*relatively slow*” (*Emphasis supplied*).

4. Applicant argues that NOLASCO does not anticipate claim 1 and NOLASCO in view of PETERSON does not render obvious claim 19 because NOLASCO fails to disclose a device having a wheel lift that may be rapidly disassembled from the cross bar. This argument is not persuasive. Even adopting the procedure delineated in Applicant’s declaration of 1/12/07 for disassembling NOLASCO and additionally adopting Applicant’s allegation of the time taken

to do so “tens of minutes” the limitation “rapidly” is still met because, “tens of minutes” may be considered rapidly within the broadest reasonable interpretation of that term. Furthermore, even adopting the definition of “rapidly” set forth by Applicant in the proposed amendment to the specification filed 1/16/07 “within a matter of minutes” NOLASCO still meets the limitation because doing something within “tens of minutes” is doing it within a “matter of minutes.” NOLASCO therefore meets all the limitations of claim 1 and NOLASCO in view of PETERSON meet the limitations of claim 19.

4.1. With respect to the interpretation of claims 1 and 19 on the merits, Applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process, the intended use must result in a manipulative difference as compared to the prior art.

5. Applicant states that KIEFER fails to disclose powering the L-arms. This statement appears to be the result of Applicant thinking that the Examiner relied on KIEFER to address the limitations claim 8 as opposed to claim 7 which is not the case, as noted previously. The argument is not relevant to any rejection previously set forth and therefore not addressed.
6. Applicant alleges unauthorized copying of his invention. While copying may be a secondary consideration of non-obviousness, no argument is presented to that effect. Absent an interference proceeding the Office will not make any factual determinations with respect to that issue.

**IX. Conclusion**

1. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access

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NEW DRAWINGS

Fig. 13

12/13

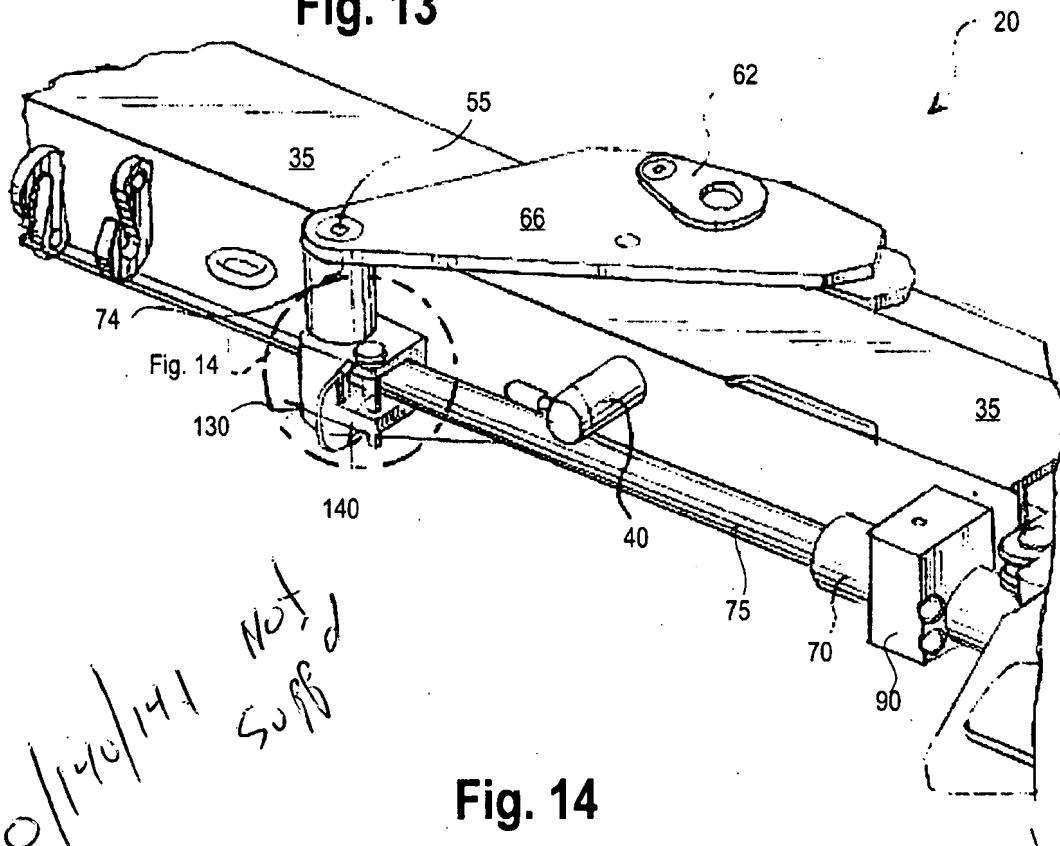
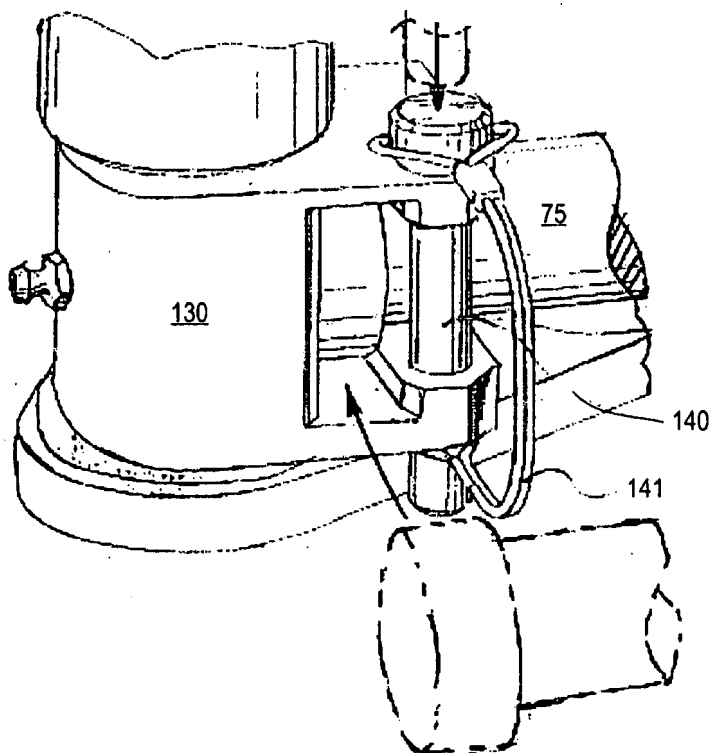


Fig. 14



130/140/141 Not  
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